IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1329 (S/S) of 2003
(Old No. 2442/1999)

Kedar Singh Mehra,
aged about 43 years,
son of Sri Chatur Singh Mehra,
resident of Village – Nanoli,
post office – Bhoj Tola, District – Almora,
presently functioning as
Generator –cum – Electrician,
B.D. Pandey (Male)
District Hospital, Nainital. …….Petitioner

Versus

1. State of U.P. through Principal Secretary, Department of Medical & Health, U.P. Civil Secretariat, Lucknow.
2. Director General, Medical & Health Services, Uttar Pradesh, Swasthya Bhawan, Lucknow.
3. Director General, (Uttaranchal Vikas), Medical & Health Services, Swasthya Bhawan, Lucknow.
4. Joint Director (Electrician), Medical & Health Department, (Kumaun Division), Nainital.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Nandan Arya, learned counsel for the petitioner and Sri N. C. Gupta, learned standing counsel for the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Certiorari to quash the order dated 16.05.1997 passed by respondent no. 4 rejecting the claim of the petitioner for promotion to the post of Technologist in the department on the ground that there is no provision for promotion from the post of Electrician – cum – Generator operator to the post of Technologist.

The submission of the learned counsel for the petitioner is that he was appointed as Generator Operator against the vacant post on 27.03.1989 by the Chief Medical Superintendent, B.D. Pandey Hospital, Nainital and has been doing work of electrician in the Department also since 1989 when he was appointed as Generator Operator. The claim of the petitioner has been rejected by the respondents that on the ground that the Uttar Pradesh Medical Health and Family Welfare Directorate Vidyut Yantrik Anurakshan Engineering Service Rules 1995 have been framed by the Government under Article 309 of the Constitution under these Rules.

The educational qualification prescribed for the Technologist has been provided under Rule 8 which provides that (i) the applicant must have passed High School with science subject from Madhyamik Shiksha Parishad, Uttar Pradesh or equivalent, (ii) he should possesses an experience of five years in the concerning trade and must have obtained a diploma in electric, electronic or mechanical engineering from the institute recognized by the Government. Rule 5 provides source of appointment on the post of Technologist which provides that 75% posts shall be filled by Commission by way of direct recruitment and 25% post shall be filled by way of promotion from amongst the electrician and draftsmen, who have completed at least 10 years service on the first date of the year of recruitment. Since the petitioner was never appointed either as Electrician or draftsman he cannot be promoted to the post of Technologist.

The submission of the learned counsel for the petitioner is that prior to enforcement of 1995 Rules the Uttar Pradesh State Health Transport Technical (Non Gazetted) Service Rules 1982 were in force. Under these Rules there is no post of Generator Operator. Petitioner provided appointment on 27.03.1989 on the

post of Generator Operator. Since under 1982 Rules the post available with the Department was of electrician and not of Generator Operator on which the petitioner has been appointed. It appears that the Appointing Authority has by inadvertent mistake change the nomenclature of the post and instead of giving appointment on the post of electrician petitioner has been appointed on the post of Generator Operator, which was not available under the 1982 Rules.

It is not disputed that the petitioner was appointed by the Chief Medical Superintendent, B.D. Pandey Hospital vide order dated 27.03.1989 on the post of Generator Operator which was not available under the Rules applicable in the department at the relevant time and under 1995 Rules too, there is no post of Generator Operator. The post available under 1995 Rules is of Electrician – cum – Generator Operator.

The submission of the respondents is that petitioner was never appointed on the post of Electrician – cum – Generator Operator on the contrary he was appointed on the post of Generator Operator and he started himself designating as Generator Operator-cum-Electrician.

The petitioner filed writ petition no. 1324 (SS) of 2003 (Kedar Singh Mehra Vs. State and Others) with a claim that though he is functioning as Electrician in the Hospital he is getting lower pay scale while the electrician posted and functioned in Parivahan Technical Unit of Medical and Director General of Medical and Health Service are getting revised pay scale on the recommendation of Samata Samiti and in the writ petition the petitioner has prayed to issue a writ in the nature of Mandamus directing the respondents to make payment of salary to the petitioner on the revised pay scale. Writ petition was disposed on 07.04.2004 with a direction to the respondents to

consider the question of payment of revised pay scale in the light of observation made in the judgment. Thereafter, petitioner filed a representation, which was rejected by the department vide order dated 21.06.2004. The petitioner preferred a writ petition no. 1421 (SS) of 2004 against the order dated 21.06.2004 and the same is pending.

The present writ petition has been filed by the petitioner for a direction to respondent to promote him on the post of Technologist. As already stated above, since under Rule 1995 the post of Technologist shall by filled by following ways 75% posts shall be filled by Commission by way of direct recruitment and 25% post shall be filled by way of promotion from amongst the electrician and draftsmen, who have completed at least 10 years service on the first date of the year of recruitment. Since the petitioner was never appointed on the post of Electrician – cum – Generator Operator he is not entitled for promotion to the post of Technologist.

The submission of the learned counsel for the petitioner is that it is true that he was appointed on the post of Generator Operator but since then he is also doing the job of electrician in the hospital. The petitioner could not show any document which show that he was ever appointed as Generator Operator – cum – Electrician and since he was not appointed as electrician he was not entitled to promote on the post of Technologist under 1995 Rules.

The petitioner has submitted that under 1982 Rules there is no post of Generator Operator available under the relevant Rules and the post available was of Electrician. The petitioner was appointed in fact, as Electrician and the nomenclature of the post has been mentioned in the appointment letter as Generator Operator is by inadvertent mistake of the Appointing Authority.

From the perusal of Rule 1982 it is true that there is no post of Generator Operator and I am unable to understand when there is no post of Generator Operator under Rules 1982 how the petitioner was appointed on the post of Generator Operator. In any case, petitioner could not show from any document that he was ever appointed as Generator Operator – cum – Electrician.

Learned counsel for the petitioner has submitted that as per qualification prescribed under 1945 Rules for the post of Electrician – cum – Generator Operator, petitioner is fully qualified and also doing the work of Generator Operator – cum - Electrician. He may be provided promotion to the post of Technologist.

Learned counsel for the petitioner has submitted that he may be permitted to make a fresh representation to the respondents for providing him promotion on the post of Technologist.

In view of the aforesaid discussions, I think it just and proper that in case the petitioner makes a fresh representation before the respondents, the respondents shall consider the same within a period of six weeks from the date of production of a certified copy of this order, alongwith the representation.

With, these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J)

March 10, 2006
SKSharma